

105TH CONGRESS
2D SESSION

H. R. 4455

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. DREIER (for himself, Ms. ESHOO, Mr. GOODLATTE, Mr. BOUCHER, Mr. COX of California, Mr. JOHN, Mr. BOEHNER, Mrs. MORELLA, Mr. SESSIONS, Mr. SOLOMON, Mr. HAYWORTH, and Mr. ROYCE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Year 2000 Readiness
5 Disclosure Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Thousands of computer systems, software
2 programs, and semiconductors are not capable of
3 recognizing certain dates in 1999 and after Decem-
4 ber 31, 1999, and will read dates in the Year 2000
5 and thereafter as if they represent the year 1900 or
6 thereafter or will fail to process such dates. This
7 problem and resulting system failures could inca-
8 pacitate systems that are essential to the functioning
9 of markets, commerce, consumer products, utilities,
10 government, and safety systems in the United States
11 and throughout the world. Reprogramming or re-
12 placing affected systems before this problem inca-
13 pacitates essential systems is a matter of national
14 and global interest.

15 (2) The prompt, candid, and thorough disclo-
16 sure and exchange of information related to Year
17 2000 readiness of entities, products, and services
18 would greatly enhance the ability of public and pri-
19 vate entities to improve their Year 2000 readiness
20 and, thus, is a matter of national importance and a
21 vital factor in minimizing disruption to the nation's
22 economic well-being and security.

23 (3) Concern about the potential for legal liabil-
24 ity associated with the disclosure and exchange of

1 Year 2000 compliance information is impeding the
2 disclosure and exchange of such information.

3 (4) The capability to freely disseminate and ex-
4 change information relating to Year 2000 readiness
5 with the public and with other companies without
6 undue concern about litigation is critical to the abil-
7 ity of public and private entities to address Year
8 2000 needs in a timely manner.

9 (5) The national interest will be served by uni-
10 form legal standards in connection with the disclo-
11 sure and exchange of Year 2000 readiness informa-
12 tion that will promote disclosures and exchanges of
13 such information in a timely fashion.

14 (b) PURPOSES.—Based upon the powers contained in
15 article I, section 8, clause 3 of the United States Constitu-
16 tion, the purposes of this Act are to promote the free dis-
17 closure and exchange of information related to Year 2000
18 readiness and to lessen burdens on interstate commerce
19 by establishing certain uniform legal principles in connec-
20 tion with the disclosure and exchange of information relat-
21 ed to Year 2000 readiness.

22 **SEC. 3. DEFINITIONS.**

23 For purposes of this Act, the following definitions
24 apply:

1 (1) YEAR 2000 STATEMENT.—The term “Year
2 2000 statement” means any statement—

3 (A) concerning an assessment, projection,
4 or estimate concerning Year 2000 processing
5 capabilities of any entity, product, or service, or
6 a set of products or services;

7 (B) concerning plans, objectives, or time-
8 tables for implementing or verifying the Year
9 2000 processing capabilities of an entity, a
10 product, or service, or a set of products or serv-
11 ices;

12 (C) concerning test plans, test dates, test
13 results, or operational problems or solutions re-
14 lated to Year 2000 processing by—

15 (i) products;

16 (ii) services that incorporate or utilize
17 products;

18 (D) attesting to, opining on, reviewing, or
19 otherwise commenting on, a Statement con-
20 stituting a Year 2000 Statement; or

21 (E) otherwise directly or indirectly relating
22 to Year 2000 processing capabilities.

23 (2) YEAR 2000 READINESS DISCLOSURE.—The
24 term “Year 2000 Readiness Disclosure” means any

1 statement identified on its face as a “Year 2000
2 Readiness Disclosure”.

3 (3) DISCLOSURE.—The term “Disclosure”
4 means a Year 2000 Readiness Disclosure.

5 (4) STATEMENT.—The term “Statement”
6 means any Statement, communication, or other con-
7 veyance of information by one party to another or to
8 the public, in any form or medium whatsoever, ex-
9 cluding, for the purposes of actions brought by the
10 Securities and Exchange Commission or the United
11 States under the securities laws, as that term is de-
12 fined in section 3(a)(47) of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78c(a)(47)), documents or
14 materials filed with the Securities and Exchange
15 Commission or with Federal banking regulators pur-
16 suant to section 12(i) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78l(i)).

18 (5) YEAR 2000 PROCESSING.—The term “Year
19 2000 processing” means the processing (including
20 calculating, comparing, sequencing, displaying, or
21 storing), transmitting, or receiving of date or date/
22 time data during, from, into, and between the twen-
23 tieth and twenty-first centuries, and the years 1999
24 and 2000, and leap year calculations.

1 (6) YEAR 2000 INTERNET WEBSITE.—The term
2 “Year 2000 Internet Website” means an Internet
3 website or other similar electronically accessible serv-
4 ice, designated on the website or service by the per-
5 son creating or controlling the website or service as
6 an area where Year 2000 Readiness Disclosures and
7 other information about the Year 2000 processing
8 capabilities of an entity, a product, service, or a set
9 of products or services, are posted or otherwise made
10 accessible to the general public.

11 (7) COVERED ACTION.—The term “covered ac-
12 tion” means any civil action of any kind, whether
13 arising under Federal or State law, except for any
14 civil action arising under Federal or State law
15 brought by a Federal, State, or other public entity,
16 agency, or authority acting in a regulatory, super-
17 visory, or enforcement capacity.

18 (8) REPUBLICATION.—The term “republica-
19 tion” means any repetition of a Statement originally
20 made by another.

21 (9) CONSUMER.—The term “consumer” means
22 a natural person who buys a consumer product other
23 than for purposes of resale.

24 (10) CONSUMER PRODUCT.—The term “con-
25 sumer product” means any personal property which

1 is normally used for personal, family, or household
2 purposes.

3 (11) MAKER.—The term “maker” means any
4 person or entity that—

5 (A) makes, develops, publishes, transmits,
6 or distributes;

7 (B) assists, contributes to, or otherwise
8 takes part in, making, publishing, transmitting
9 or distributing; or

10 (C) attests to, opines on, reviews, or other-
11 wise comments on any Disclosure.

12 **SEC. 4. PROTECTION FOR YEAR 2000 READINESS DISCLO-**
13 **SURES.**

14 (a) IN GENERAL.—In any covered action—

15 (1) no Year 2000 Readiness Disclosure or any
16 portion thereof shall be admissible unless the pro-
17 ponent of admissibility of the Disclosure establishes,
18 in addition to all other applicable requirements of
19 admissibility, that the Disclosure was material,
20 and—

21 (A) that the Disclosure was made with—

22 (i) knowledge that the Disclosure was
23 false or misleading; and

24 (ii) an intent to deceive; or

1 (B) where the Disclosure was or included
2 a republication regarding a third party, that—

3 (i) the republication was made with-
4 out a disclosure by the maker that the Dis-
5 closure is based on a republication; and

6 (ii) the maker has not verified the
7 original Statement; and

8 (2) to the extent such action is based on an al-
9 legedly false, inaccurate, or misleading Year 2000
10 Statement, the maker of any such Statement shall
11 not be liable under Federal or State law with respect
12 thereto unless the claimant establishes, in addition
13 to all other requisite elements of the applicable ac-
14 tion, that the Statement was material, and—

15 (A) that the Statement was made with—

16 (i) knowledge that the Statement was
17 false or misleading; and

18 (ii) an intent to deceive; or

19 (B) where the Statement was or included
20 a republication regarding a third party, that—

21 (i) the Statement was made without a
22 disclosure by the maker that the Statement
23 is based on a republication; and

24 (ii) the maker has not verified the
25 original Statement; and

1 (b) YEAR 2000 INTERNET WEBSITE.—In any cov-
2 ered action in which the adequacy of notice about Year
3 2000 processing is at issue, and except as provided by con-
4 tract, the posting of a notice by the entity purporting to
5 have provided such notice on that entity’s Year 2000
6 Internet Website shall be presumed to be an adequate
7 mechanism for providing such notice. Nothing in this sub-
8 section (b) shall—

9 (1) alter or amend any Federal or State statute
10 or regulation requiring that notice about Year 2000
11 processing be provided using a different mechanism;

12 (2) create a duty to provide notice about Year
13 2000 processing;

14 (3) preclude or suggest the use of any other
15 medium for notice about Year 2000 processing or
16 require the use of an Internet Website; or

17 (4) mandate the content or timing of any no-
18 tices about Year 2000 processing.

19 (c) LIMITATION ON EFFECT OF YEAR 2000 READI-
20 NESS DISCLOSURES.—In any covered action, no Year
21 2000 Readiness Disclosure shall be interpreted or con-
22 strued as an amendment to, or alteration of, a written con-
23 tract or written warranty, whether entered into by a public
24 or private party. This subsection shall not apply—

1 (1) to the extent the party whose Statement is
2 alleged to have amended or altered a contract or
3 warranty has otherwise agreed in writing to so alter
4 or amend the written contract or written warranty;

5 (2) to Year 2000 Readiness Disclosures ex-
6 pressed in a writing that constitutes the written con-
7 tract or written warranty; or

8 (3) where the contract or warranty specifically
9 provides for its amendment or alteration through the
10 making of a Year 2000 Readiness Disclosure.

11 (d) SPECIAL DATA GATHERING.—A Federal entity,
12 agency, or authority may expressly designate requests for
13 the voluntary provision of information relating to Year
14 2000 processing (including Year 2000 Readiness Dislo-
15 sures) as “Special Year 2000 Data Gathering Requests”
16 made pursuant to this subsection. Information provided
17 in response to such requests shall be prohibited from dis-
18 closure to any third party, including disclosure under sec-
19 tion 552 of title 5, United States Code, and may not be
20 used, directly or indirectly, in any civil action arising
21 under any Federal or State law. Nothing in this subsection
22 precludes a Federal entity, agency, or authority from sepa-
23 rately obtaining the information submitted in response to
24 this subsection through the use of independent legal au-

1 thorties and using such separately obtained information
2 in any action.

3 **SEC. 5. EXCLUSIONS.**

4 (a) EFFECT ON INFORMATION DISCLOSURE.—This
5 Act does not affect, abrogate, amend, or alter, and shall
6 not be construed to affect, abrogate, amend, or alter, the
7 authority of a Federal or State entity, agency, or authority
8 to enforce a requirement to provide, disclose, or not to
9 disclose, information under a Federal or State statute or
10 regulation or to enforce such statute or regulation.

11 (b) CONTRACTS AND OTHER CLAIMS.—Except as
12 may be otherwise provided in this Act, this Act does not
13 affect, abrogate, amend, or alter, and shall not be con-
14 strued to affect, abrogate, amend, or alter, any right by
15 written contract between the plaintiff and the defendant,
16 under any Federal or State law, or affect Statements
17 made directly to a consumer in a writing that constitutes
18 a written contract for the sale of a consumer product by
19 the seller or manufacturer of the consumer product.

20 (c) DUTY OR STANDARD OF CARE.—This Act shall
21 not be deemed to impose upon the maker of any Year
22 2000 Readiness Disclosure any increased obligation, duty,
23 or standard of care than is otherwise applicable under
24 Federal or State law. This Act does not preclude any party
25 from making or providing any additional disclaimer or like

1 provisions in connection with any Year 2000 Readiness
2 Disclosure.

3 (d) INTELLECTUAL PROPERTY RIGHTS.—This Act
4 does not affect, abrogate, amend, or alter, and shall not
5 be construed to affect, abrogate, amend, or alter, any right
6 in a patent, copyright, trademark, trade name, or service
7 mark, under any Federal or State law.

8 (e) INJUNCTIVE RELIEF.—Nothing in this Act shall
9 be deemed to preclude a claimant from seeking temporary
10 or permanent injunctive relief with respect to a Year 2000
11 Readiness Disclosure, subject to the limitations on admis-
12 sibility imposed by this Act.

13 **SEC. 6. APPLICABILITY.**

14 This Act shall apply to any Year 2000 Readiness Dis-
15 closure made on or after January 1, 1998, through De-
16 cember 31, 2001.

17 **SEC. 7. PRIOR WRITTEN DISCLOSURES.**

18 Written disclosures regarding Year 2000 readiness
19 made prior to the effective date of this Act and after Janu-
20 ary 1, 1998, that would otherwise satisfy the requirements
21 of subsection 3(1), may be denominated a Year 2000
22 Readiness Disclosure if so denominated by a notification
23 within 90 days of the enactment of the Act. Notification

- 1 may include posting on a Year 2000 Website as defined
- 2 in subsection 3(6).

